IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4025 of 2007
with
CIVIL APPLICATION NO. 10668 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL INSURANCE CO. - Appellant
Versus
BAISABA PREMSANG JADEJA & 2 - Respondents

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Appearance :
MR DAKSHESH MEHTA for Appellant.
MR MEHUL S SHAH and MR SURESH M SHAH for Respondents : 1 - 2.
MR HASMUKH THAKKER and MR PALAK H THAKKER for Respondent : 3,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 22/11/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

By order dated 1st October, 2007 this Court issued notice to the other side for final disposal of the appeal, making it returnable today. Respondents No.1 & 2 – original claimants are represented by learned advocate Mr.Shah, and respondent No.3 is represented by learned advocate Mr.Thakker.

2. We have heard the learned advocates for the parties.

3. The award under challenge is one passed by the Motor Accident Claims Tribunal [FTC-5], Kachchh at Bhuj, in Motor Accident Claim Petition No. 830/2002 under Section 163-A of the Motor Vehicles Act, and the ground of challenge by the appellant is that since, according to the claimants, the income of the deceased was more than Rs. 40,000/- per annum, the Tribunal could not have entertained the application under Section 163-A of the Motor Vehicles Act and could not have passed the award in exercise of the powers thereunder. In support of this, reliance is placed on the decision rendered in **Deepal Girishbhai Soni and others vs. United India Insurance Co.Ltd.**

Baroda, (2004)5 SCC 385.

4. Learned advocate Mr.Shah, without conceding to the ground taken by the appellant, on instructions of his client, submits that the appeal may be allowed and the matter may be remanded to the Tribunal for considering the case of the claimants afresh, either under Section 163-A or Section 166 of the Motor Vehicles Act, after permitting the claimants to amend their claim-petition, if the claimants so desire. He also requests for fixing up the time limit for disposal of the case by the Tribunal.

5. We have considered the contentions put forward by the rival sides, and we find legal justification in the concession made by Mr.Shah, learned advocate for the original claimants, in light of the judgment of the Supreme Court.

6. For what has been said above, the judgment and award passed by the Motor Accident Claims Tribunal, Kachchh at Bhuj in Motor Accident Claim Petition No.830/2002 is hereby quashed and set aside and the matter is remanded to the Tribunal for adjudication

afresh.

7. Out of the amount deposited by the appellant to satisfy the award, the amount ordered to be invested in Fixed Deposit (90%) will continue to remain in Fixed Deposit and the claimants would be entitled to the periodical interest that may have accrued till today. The interest that may accrue on the said Fixed Deposit hereafter, will be accumulated and would be disbursed as per the directions that may be passed in the final award. The amount that may have been received by the claimants (10%) will be subject to adjustment against the final award.

8. The Tribunal is directed to decide the case afresh within a period of six months from the date of receipt of the record and proceedings and the writ of this Court. The Tribunal shall afford reasonable opportunity to the parties to amend their pleadings and to adduce evidence in support of the amended pleadings only, subject to the time limit fixed hereinabove for disposal of the case. The parties shall extend cooperation to the Tribunal in disposal

of the case as per the direction of this Court. The Tribunal will decide the case strictly on merits, without being influenced by any of the observations made by this Court. It is clarified that if, upon passing of final award, the compensation to be awarded is lesser than what is awarded by the judgment and award quashed by this Court, the appellant would be entitled to claim refund from the Tribunal accordingly.

9. The appeal is allowed accordingly. The record and proceedings be sent to the Tribunal forthwith. There shall be no order as to costs.

Civil Application No. 10668/2007

In view of the judgment rendered in the appeal, this civil application does not survive and accordingly, the same stands disposed of. Rule is discharged. No costs.

[A.L.DAVE,J.]

[SHARAD D.DAVE,J.]

(patel)